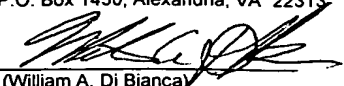


I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: November 21, 2008 Signature: 

(William A. Di Bianca)

DAC  
C IFW

Docket No.: SPINE 3.0-437 CPCPCPCPCPCPCP II CON I  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Errico et al.

Application No.: 10/784,645

Confirmation No.: 8190

Filed: February 23, 2004

Art Unit: 3738

For: WEDGE PLATE INSERTER/IMPACTOR  
AND RELATED METHODS FOR USE IN  
IMPLANTING AN ARTIFICIAL  
INTERVERTEBRAL DISC

Examiner: B. E.  
Pellegrino

**PETITION UNDER 37 C.F.R. § 1.78(A) (3)**  
**TO CORRECT PRIORITY INFORMATION**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**I. SUMMARY**

This petition is submitted to correct the priority information in U.S. Patent Application 10/784,645 ("the '645 application"). In particular, the relationship information, in the original filing on February 23, 2004, for the applications from which benefit is claimed is believed to be incorrect and thus correction is sought. The petition fee set forth in 37 C.F.R. § 1.17(t) of \$1,400.00 is provided herewith.

Petitioner submits that the Domestic Priority Data as stated in the Filing Receipt mailed May 19, 2004, in the Request for Corrected Filing Receipt and "initial" Application Data Sheet filed on October 11, 2005 and Corrected Filing Receipt (mailed December 1, 2005) is incorrect. Petitioner requests

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that the Domestic Priority Data be revised as shown in the attached Supplemental Application Data Sheet, in the Request for Corrected Filing Receipt and in the revisions to the specification in an Amendment filed today, and any delay by Petitioner in submitting the correct priority data to the U.S. Patent & Trademark Office ("USPTO"), from the time the claim was due to the date the claim was filed, was unintentional.

## II. FACTS

A statement of domestic priority data, on the first page of the specification of the '645 application, filed February 23, 2004, included a claim for priority under 35 U.S.C. §120 as a "continuation application of U.S. Patent Application 10/425,267 (filed April 29, 2003) entitled "Wedge Plate Inserter/Impactor and Related Methods for use in Implanting an Artificial Intervertebral Disc", which is a continuing application of U.S. Patent Application 10/282,356 (filed October 29, 2002) entitled "Instrumentation and Methods For Use In Implanting an Artificial Intervertebral Disc", which is a continuing application of U.S. Patent Application Serial Number 10/256,160 (filed September 26, 2002) entitled "Artificial Intervertebral Disc Having Limited Rotation Using a Captured Ball and Socket Joint With a Solid Ball and Compression Locking Post", which is a continuing application of U.S. Patent Application Serial Number 10/175,417 (filed June 19, 2002) entitled "Artificial Intervertebral Disc Utilizing a Ball Joint Coupling", which is a continuing application of U.S. Patent Application Serial Number 10/151,280 (filed May 20, 2002) entitled "Tension Bearing Artificial Disc Providing a Centroid of Motion Centrally Located Within an Intervertebral Space", which is a continuing application of both U.S. Patent Application Serial Number 09/970,479 (filed October 4, 2001) entitled "Intervertebral Spacer Device Utilizing a Spirally

Slotted Belleville Washer Having Radially Extending Grooves" as well as U.S. Patent Application Serial Number 10/140,153 (filed May 7, 2002) entitled "Artificial Intervertebral Disc Having a Flexible Wire Mesh Vertebral Body Contact Element", the former being a continuing application of U.S. Patent Application Serial Number 09/968,046 (filed October 1, 2001) entitled "Intervertebral Spacer Device Utilizing a Belleville Washer Having Radially Extending Grooves" and the latter being a continuing application of both U.S. Patent Application Serial Number 09/970,479 (detailed above) as well as U.S. Patent Application Serial Number 10/128,619 (filed April 23, 2002) entitled "Intervertebral Spacer Having a Flexible Wire Mesh Vertebral Body Contact Element", which is a continuing application of both U.S. Patent Application Serial Number 09/906,119 (filed July 16, 2001) and entitled "Trial Intervertebral Distraction Spacers" as well as U.S. Patent Application Serial Number 09/982,148 (filed October 18, 2001) and entitled "Intervertebral Spacer Device Having Arch Shaped Spring Elements". All of the above mentioned applications are hereby incorporated by reference herein in their respective entireties." No Application Data Sheet was filed with the application.

Subsequent to the filing of the '645 application, the '645 application, along with all the related files, were transferred as just one part of a sizeable patent portfolio, to the law firm of Lerner, David, Littenberg, Krumholz and Mentlik, LLP ("Lerner, David"). A revocation and substitution of attorneys was executed by the assignee and filed with the USPTO on May 18, 2005.

After the transfer of files, the prosecuting attorney at Lerner David recognized that the domestic priority information in the '645 application was incorrect. The

prosecuting attorney filed an "Initial" Application Data Sheet and a Request for Corrected Filing Receipt on October 11, 2005 listing incorrect domestic priority information:

Application::	Continuity Type::	Parent Application::	Parent Filing Date::
This Application	Continuation of	10/425,267	04/29/03
10/425,267	Continuation-in-part of	10/282,356	10/29/02
10/282,356	Continuation-in-part of	10/256,160	09/26/02
10/256,160	Continuation-in-part of	10/175,417	06/19/02
10/175,417	Continuation-in-part of	10/151,280	05/20/02
10/151,280	Continuation-in-part of	10/140,153	05/07/02
10/151,280	Continuation-in-part of	09/970,479	10/4/01
10/140,153	Continuation-in-part of	10/128,619	04/23/02
10/140,153	Continuation-in-part of	09/970,479	10/4/01
10/128,619	Continuation-in-part of	09/906,119	07/16/01
10/128,619	Continuation-in-part of	09/982,148	10/18/01
09/970,479	Continuation-in-part of	09/968,045	10/1/01
09/968,045	Continuation-in-part of	09/789,936	2/15/01

The prosecuting attorney incorrectly claimed priority to U.S. Application 09/789,936 (filed February 15, 2001), now abandoned, and inadvertently filed the Application Data Sheet without this petition and related fee.

### **III. NATURE OF PETITION**

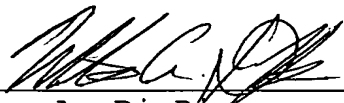
Petitioner respectfully submits this petition in connection with the correction of domestic priority, asserting that the delay by Petitioner in submitting the correct priority data to the USPTO, from the time the claim was due and the date the claim was filed, was unintentional.

For the good cause shown, it is respectfully requested that the instant Petition be granted and the priority corrected as shown in the Supplemental Application Data Sheet and amendments to the Cross-Reference to Related Applications paragraph of the specification, (paragraph [0001]), included in an Amendment filed today.

The Director is hereby authorized to charge our Deposit Account No. 12-1095 to cover the fee set forth in 37 C.F.R. § 1.17(t). If there are any additional charges in connection with this requested Petition, please charge Deposit Account No. 12-1095 therefor.

Dated: November 21, 2008

Respectfully submitted,

By   
William A. Di Bianca

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